

Remarks

Amendments to the Specification

An Office Communication mailed to Applicant on October 15, 2010 indicated inconsistencies between the specification and drawings. More specifically, the communication indicated that the drawings filed 02/12/2004 include FIGS. 10d-10f, but the specification's brief description of the drawings does not describe a drawing with that designation. By this response, Applicant has amended the specification to include a brief description of the drawings. Support for the amendment may be found at least at page 28, lines 3-9. No new matter has been added. Applicant respectfully requests entry of the amendment.

Comments on Statement of Reasons For Allowance

The Notice of Allowance mailed September 13, 2010, states:

The following is an examiner's statement of reasons for allowance: Vaccaro (US Pat. No. 6,102,950) is an intervertebral implant that has inserts which may be raised up out of the cage element and into the surrounding vertebrae. The claims require that the insert component must be inserted into the cage element itself. Vaccaro's inserts (50) are located within the upper surface of the cage element (20) and do not extend into the interior of the cage element.
(Notice of Allowance, page 2)

Applicant respectfully disagrees with the Examiner's Statement of Reasons for Allowance and / or Applicant believes that the Examiner's Statement of Reasons for Allowance is incomplete.

Applicant respectfully submits that the cited art does not teach or suggest the combinations of features set forth in the Applicant's claims. By way of non-limiting example, Applicant submits that the cited references at least do not appear to teach or suggest the combination of features of claim 1 including an intervertebral implant for a human spine that includes a cage element having a superior surface and an inferior surface, wherein the inferior surface of the cage element is configured to support a first vertebra of the human spine to inhibit movement of the first vertebra towards a second vertebra, and wherein the superior surface of the cage element has a first opening. The implant further including an insert having a support surface for the second vertebra, wherein the support surface, during use, supports at least a portion of the second vertebra above and away from the superior surface of the cage element and inhibits movement of the second vertebra towards the first vertebra, and wherein the insert, during use, is inserted at least partially into the cage element. The implant further including an expansion member that, during use, is inserted in the cage element through an opening in a side of the cage element to expand the intervertebral implant by elevating the insert to move a portion of the insert through the first opening in the superior surface of the cage element so that at least a portion of the support surface of the insert is raised above and away from the superior surface of the cage to support at least a portion of the second vertebra above and away from the superior

surface of the cage element. Applicant also submits that the combination of the features of the other claims are not taught or suggested by the cited art.

Additional Comments

If an extension of time is required, Applicant hereby requests the appropriate extension of time. If any other fees are required, or have been overpaid, please appropriately charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5943-00300/EBM.

Respectfully submitted,

/Eric B. Meyertons/

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